

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT,
UTAH COUNTY, STATE OF UTAH.

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The Provo Reservoir Company,
a corporation,
Plaintiff,
vs.
Provo City, et al.
Defendants.

Original
No. 2888 Civil.

AMENDED ANSWER OF

John Buhler, et al.

Come now the defendants John U. Buhler, Gotlieb Buhler, Orson P. Mathews, Henry Watkins, J. Brigham Wilson, Andreas Burgener, Frederick Forrer, David McGimpsey, Thomas Monks, Henry Zenger, Mary Schoni, Joseph Schoni, Cordelia Wilson, James Wilson, George Wilson, D. A. Gibson, Frederick Remmand, William Bonner, Felix Martin, Jacob Kummer, W. L. Van Wagoner, John U. Prebst, Geo. A. Huntington, Harold Schear and Emely Carmack as successors to Alice Schear, deceased, Mrs. Anna Lunceford as successor in interest to Stephen H. Smith, deceased, and James A. Hamilton, William Hamilton, Ella Hamilton Snyder, Jennie Hamilton Summers, Lovica Hamilton Snyder, Mary Hamilton Chambers, Maggie Hamilton Campbell, Theodore Hamilton and David Hamilton as successors in interest to James B. Hamilton, deceased, and by leave of court first had and obtained, file their amended answer to plaintiff's complaint filed herein, and admit, deny, and allege as follows:

1. In answer to paragraphs 1 to 19 inclusive of said complaint these defendants have not sufficient information to form a belief as to the allegations therein contained, and therefor deny the same on information and belief.

2. Defendants admit the allegations in paragraph 20.

3. These defendants deny on information and belief the allegations in paragraphs 21 to 23 inclusive for want of sufficient information.

4. Answering paragraph 24 these defendants admit that they claim a right to the use of the waters of Provo River and its tributaries.

5. These defendants deny upon information and belief all the allegations contained in paragraphs 25 to 39 inclusive for want of sufficient information.

6. These defendants deny all the allegations in said complaint not herein specifically admitted.

Further answering said complaint and as an affirmative defence thereto the defendants allege:

1. That the defendant James B. Hamilton died after the commencement of this action and that prior to his death he conveyed all his property to his children James A. Hamilton, William Hamilton, Ella Hamilton Snyder, Jennie Hamilton Summers, Lovica Hamilton Snyder, Mary Hamilton Chambers, Theodore Hamilton and David Hamilton, reserving a life estate unto himself and his wife Martha Hamilton, and that the said named children are now the owners of the lands and water rights heretofore owned by said defendant James B. Hamilton.

2. That the defendant Alice Shear named in plaintiff's complaint is dead, and the lands and water rights formerly owned by her have been succeeded to by her children, a portion going to Harold Shear and Mrs. Emely Carmack defendants named herein.

3. That Mrs. Mary Lunceford has succeeded to the lands and water right formerly owned by her husband Stephen H. Smith, deceased,

4. That more than thirty years ago these defendants, or their predecessors in interest, entered upon the banks of Snake Creek and its tributaries near and in the town of Midway, Wasatch county, Utah, and diverted therefrom sufficient water to irrigate the hereinafter described areas; that continuously during the past thirty years and over these defendants, and their predecessors in interest, have diverted from said streams sufficient water to irrigate the said acreages and have brought the same from a barren state and converted the same into productive lands; That in order to irrigate said lands sufficiently to produce and mature crops thereon is it necessary to use at the rate of one second foot of water for each forty acres of land from the beginning of the irrigation season to July 15th of each year, and at the rate of one second foot for each fifty-five acres thereafter, and that these defendants have continuously and uninterruptedly used water to said amounts for said period, and that the said use has been beneficial and without waste.

5. That the rights of these defendants to the use of water as afore said and for the number of acres hereinafter set forth is exclusive of the rights of the Midway Irrigation Company and exclusive of the rights of these defendants as stockholders in said Midway Irrigation Company, or as joint owners in the "Island Ditch" controlled by the Midway Irrigation Company, and that the water rights herein referred are not represented by capital stock in the Midway Irrigation Company.

but are wholly separate and distinct therefrom, and are so recognized by said Midway Irrigation Company, except that the said water is distributed by and under the control of the Midway Irrigation Company through its system of canals for the purpose of facilitating the economic use thereof and for the purpose of regulation. These defendants having voluntarily submitted the said distribution and control thereof without in any manner surrendering their several respective rights as separate owners thereof.

6. That the several areas so irrigated by these defendants as owners of separate interests and individual water rights not represented by capital stock in the Midway Irrigation Company are as follows:

✓ John U. Buhler - - - - -	6	acres:
✓ J. Brigham Wilson - - - - -	1	acre
✓ Gottlieb Buhler - - - - -	5	acres
✓ Andreas Burgener - - - - -	1	acre
✓ Orson P. Mathews - - - - -	5	acres
✓ Frederick Forrer - - - - -	5	acres
✓ Henry Watkins - - - - -	9	acres
✓ David McGimpsey - - - - -	19	acres
✓ Felix Martin - - - - -	14	acres
✓ Jacob Kummer - - - - -	5	acres
✓ William Bonner - - - - -	1	acre (exclusive of
✓ Thomas Monks - - - - -	11	acres Island ditch)
✓ Henry Zenger - - - - -	1	acre - Do.
✓ Mary Schoni and Joseph Schoni - - - - -	4	acres
✓ Cordelia Wilson, George J. Wilson and		
✓ James T. Wilson - - - - -	57	acres
✓ David A. Gibsin - - - - -	7	acres
✓ Frederick Remmund Jr. - - - - -	5	acres
✓ Wm. L. Van Wagoner - - - - -	1	acre
✓ John U. Probst - - - - -	2	acres
✓ Harold Schear and Emily Carmack - - - - -	10.	acres
✓ George A. Huntington - - - - -	1	acre
✓ Anna Luncford - - - - -	1.	acre
✓ James A. Hamilton, William Hamilton, Ella		
Hamilton Snyder, Jennie Hamilton Summers,		
Lovica Hamilton Snyder, Mary Hamilton		
Chambers, Maggie Hamilton Campbell, Theodore		
Hamilton and David Hamilton as successors		
in interest to James B. Hamilton, deceased,	41	acres (exclusive of
		Island Ditch)

7. That the rights of these defendants hereinabove set forth are primary rights and superior to any rights owned or claimed by the plaintiff to the said waters or any portion thereof.

Wherefore these defendants having fully answer the said complaint pray that plaintiff take nothing as against them, and that their several rights to the use of said water as herein alleged be decreed to them, that the be given their costs, and such other and further relief as may seem just in the premises.

State of Utah,)
) ss.
County of Wasatch.)

Gottlieb Buhler being

first duly sworn on his oath says: that he is one of the defendants named in the foregoing answer, that he is familiar with the facts as alleged in said answer; that he has read the foregoing answer and knows the contents thereof, and that the matters therein alleged are true of his own knowledge, except as to matters stated on information and belief and that as to all such allegations he verily believes them to be true.

Gottlieb Buhler

Subscribed and sworn to before me this 7th day of January, 1917.

Chas. J. Wahlquist
Notary Public.



IN DIST. COURT
BEAUFORT CO., UTAH.

* FILED *

JAN 9 - 1917

L. T. Epperson Clerk.

L. B. Luerse Deputy.